

	<p style="text-align: center;">The (Draft) Public Procurement Bill, 2011</p> <p style="text-align: center;">A Bill</p> <p><i>to regulate Public Procurement by all Ministries and Departments of the Central Government, Central Public Sector Enterprises (CPSEs), autonomous and statutory bodies controlled by the Central Government and other procuring entities with the objectives of ensuring transparency, fair and equitable treatment of bidders, promoting competition and enhancing efficiency and economy in the Procurement Process</i></p> <p>WHEREAS there is no legislation currently governing Public Procurement;</p> <p>AND WHEREAS the Central Government is committed to ensuring the highest standards of transparency, accountability and probity in the Public Procurement Process and enhancing public confidence in Public Procurement.</p> <p>Be it enacted by Parliament in the Sixty-second year of the Republic of India as follows:-</p>	
	<u>CHAPTER I: PRELIMINARY</u>	
Short Title and Commencement	<p>1. (1) This Act may be called the Public Procurement Act, 2011.</p> <p>(2) This Act shall come into force on such date as the Central Government, may, by notification in the Official Gazette appoint:</p> <p><i>Provided</i>, that different dates may be appointed for different provisions of this Act and any reference in any such provision to</p>	

	<p>the commencement of this Act shall be construed as a reference to the coming into force of that provision.</p>	
<p>Definitions</p>	<p>2. In this Act, unless the context otherwise requires:</p> <p>(a) “Bidder” or “Supplier” means any potential party or any party to Procurement proceedings with a procuring entity, as the context requires;</p> <p>(b) “Bidding Documents” means the Invitation To Bid and the Complete Bidding Document.</p> <p>(c) “Bid Evaluation Committee” means a committee established by a procuring entity under Section 25(1) of this Act.</p> <p>(d) “Bid Opening Committee” means a committee established by a procuring entity under Section 24 (1) of this Act.</p> <p>(e) “Bid Security” “means a security provided to the procuring entity by Bidders in terms of the provisions of the Bidding Documents;</p> <p>(f) “Central Purchase Organisation” means an organisation whose major function is to make Procurement for other procuring entities or to enter into Rate Contracts or Framework Agreements for Procurement by other procuring entities.</p> <p>(g) “Competitive Negotiations” is a Procurement method wherein the procuring entity directly solicits offers from invited Bidders and negotiates with them to secure its best interests</p> <p>(h) “Complete Bidding Document” means a document issued by the procuring entity, including any amendments thereto, that sets out the comprehensive terms and conditions of the Procurement;</p>	

	<p>(i) "Electronic Mechanism" means using electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means.</p> <p>(j) "Electronic Reverse Auction" means an online real-time purchasing technique utilised by the procuring entity to select the successful submission, which involves presentation by Bidders of successively lowered bids during a scheduled period of time and the automatic evaluation of bids;</p> <p>(k) "Eligible Bidder" means a Bidder which is qualified according to Section 7 of this Act and not prevented from bidding by this Act or any other law in force.</p> <p>(l) "Framework Agreement" means an agreement or other arrangement between one or more procuring entities and one or more Bidders which establishes the terms which may include the terms as to price and, where appropriate, quantity, under which the Bidder will enter into one or more contracts with a procuring entity in the period during which the agreement or other arrangement applies;</p> <p>(m) "Goods" includes all articles, material, commodities, livestock, furniture, fixtures, raw material, spares, instruments, machinery, equipment, industrial plant etc. purchased or otherwise acquired for the use of a procuring entity but excludes books, publications, periodicals etc. for a library</p> <p>(n) "Integrity Pact" means an agreement between the procuring entity and the Bidder(s), in terms of Section 11 of this Act.</p> <p>(o) "Invitation To Bid" means a document</p>	
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	<p>published by the procuring entity inviting bids relating to the subject matter of Procurement</p> <p>(p) “Offset” means any condition or undertaking sought or imposed under Section 53 of this Act;</p> <p>(q) “Open Competitive Bidding” means a Procurement method in which any Eligible Bidder may submit a bid;</p> <p>(r) “Portal” means the Central Public Procurement Portal established under Section 16 of this Act.</p> <p>(s) “Prescribed” means prescribed by Rules made under this Act;</p> <p>(t) “Pre-qualification” means the procedure set out in Section 18 of this Act to identify, prior to solicitation, Bidders that are qualified;</p> <p>(u) “Procurement” or “Public Procurement” means the acquisition of Works, Goods or Services, including award of Public Private Partnership projects, by a procuring entity, and includes all stages of the process of acquisition, by purchase, lease, licence or otherwise, of Works, Goods, or Services, beginning with the process for determining the need for such acquisition and ending with completion and expiry of the Procurement Contract or Framework Agreement, but does not include any acquisition without consideration, and “procure” or “procured” shall be construed accordingly;</p> <p>(v) “Procurement Contract” means a contract entered into between the procuring entity and a successful Bidder concerning the subject matter of Procurement</p> <p>(w) “Procurement Process” means the process of Procurement extending from the determination of need for Procurement till</p>	
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	<p>the award of the Procurement Contract</p> <p>(x) “Public Private Partnership” means an arrangement between a government / statutory entity / government owned entity on one side and a private sector entity on the other, for the provision of public assets and/or public services, through investments being made and/or management being undertaken by the private sector entity, for a specified period of time, where there is well defined allocation of risk between the private sector and the public entity and the private entity receives performance linked payments that conform (or are benchmarked) to specified and pre-determined performance standards, measurable by the public entity or its representative.</p> <p>(y) “Rate Contract” means an agreement between a procuring entity and one or more Bidders for the supply of a specific subject matter of Procurement which prescribes the terms, including the price, under which the Bidder will enter into one or more contracts with one or more procuring entities for supply of specific quantities during the period of validity of the agreement;</p> <p>(z) “Registered Supplier” means any Supplier who is on a list of Registered Suppliers of the relevant procuring entity or a Central Purchase Organisation, under Section 17 of this Act, as the context requires.</p> <p>(aa) “Restricted Bidding” is a Procurement method in which only those Bidders previously registered with the procuring entity may submit a bid, unless the procuring entity provides otherwise.</p> <p>(bb) “Service” means any object of Procurement other than Goods or Works</p>	
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	<p>and includes any Services classified or declared as such by the procuring entity;</p> <p>(cc) “Single Source Procurement” is a Procurement method in which the procuring entity solicits a proposal or quotation from a single Supplier;</p> <p>(dd) “Standstill Period” means the period between notifying a submission as successful and acceptance of the successful submission during which an application for reconsideration can be filed with the procuring entity</p> <p>(ee) “Supplier” - is as defined in Section 2(a) of this Act;</p> <p>(ff) “Technical Evaluation Committee” means a committee established by a procuring entity under Section 25(3)(a) of this Act.</p> <p>(gg) “Two - Stage Bidding” is a Procurement method wherein the bids are submitted and evaluated in two separate stages of the Procurement Process in terms of Section 34 of this Act.</p> <p>(hh) “Works” includes all Works associated with the construction, reconstruction, erection, demolition, excavation, drilling, survey, investigation, repair or renovation of a building, road or structure.</p>	
<p>Scope and Application of the Act</p>	<p>3. (1) This Act shall apply to all procuring entities as defined under Sub-section (2) of this Section.</p> <p>(2) For the purposes of this Act, ‘procuring entity’ means:</p> <p>(a) Ministries and Departments of the Central Government, their attached and subordinate offices</p> <p>(b) All Central Public Sector Enterprises controlled by the Central</p>	

	<p>Government</p> <p>(c) Central Purchase Organisations of the Central Government</p> <p>(d) Constitutional bodies whose expenditure is met from the Consolidated Fund of India;</p> <p>(e) Any body or board or corporation or authority or society or autonomous body (by whatever name called) established or constituted under an Act of Parliament or controlled by the Central Government;</p> <p>(f) Any other entity deemed by the Central Government, by notification to this effect, to be a procuring entity for the purpose of this Act.</p> <p>(3) The provisions of this Act shall not apply to:</p> <p>(a) Procurements necessitated by disasters, as defined under the Disaster Management Act, 2005.</p> <p>(b) Procurements that the Central Government may exempt by notification on grounds of national security or strategic considerations</p> <p>(c) Procurements under the particular procedure or condition of a treaty or other form of an inter-governmental agreement to which India is a party with one or more other States, or under an agreement entered into by India with an intergovernmental international financing institution, only where and to the extent that the applicable procedure or condition is inconsistent with this Act.</p> <p>(d) contracts awarded for:</p> <p>(i) the acquisition or rental of land, existing buildings, or other</p>	
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	<p>immovable property or the rights thereon;</p> <p>(ii) Procurement of agricultural products made in furtherance of international agricultural support or human feeding programmes, including international food aid;</p> <p>(e) the Procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;</p> <p>(f) public employment contracts;</p> <p>(g) Such other Procurements or class or Procurements as may be exempt by notification by the Central Government in public interest, subject to such conditions as may be specified.</p>	
<p>Procuring Entities to comply with the Act and Rules</p>	<p>4. (1) Subject to the provision of Section 3(3) of this Act, all procuring entities shall carry out their Procurement in accordance with the provisions of this Act and the applicable Rules framed thereunder.</p> <p>(2) The Central Government shall frame Rules for Procurement of 'Goods', 'Works' and 'Services, and any other Rules as may be necessary to fulfil the obligations under this Act.</p> <p>(3) The Central Government may frame separate sets of Rules for Procurement for the purpose of national security, for entering into Public Private Partnerships and for Procurement by Central Public Sector Enterprises.</p> <p>(4) Without prejudice to the generality of</p>	

	<p>Sub-sections (2) and (3) of this Section, such Rules may provide for the following matters, namely:</p> <ul style="list-style-type: none">(a) Matters to be decided while determining need for Procurement under Section 5 of this Act;(b) Circumstances in which participation of Bidders may be limited under Section 6 of this Act;(c) Additional qualifications to be fulfilled by Bidders under Section 7 (1)(e) of this Act;(d) Information or record of Procurement proceedings required to be maintained under Section 10 of this Act;(e) Nature of Procurement and threshold value above which Integrity Pact would need to be entered into and requirement to specify the same by procuring entities in certain cases under Section 11 of this Act;(f) Format of the Integrity Pact under Section 11(3) of this Act;(g) Guidelines for drawing up the description of the subject matter of Procurement under Section 12 of this Act;(h) Provisions relating to Price negotiations under Section 14 of this Act;(i) Terms and conditions of Procurement Contracts under Section 15 of this Act;(j) Information to be provided on the Central Public Procurement Portal under Section 16 of this Act;(k) Registration of Bidders under	
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	<p>Section 17 of this Act;</p> <ul style="list-style-type: none"> (l) Provisions relating to content of Invitation to Bid and Complete Bidding Document under Section 19 of this Act; (m) Minimum time for submission of bids under Section 20 of this Act; (n) Provisions relating to responsibilities of Bid Opening Committee, Bid Evaluation Committee and Technical Evaluation Committee under Sections 24 and 25 of this Act; (o) Provisions relating to determination of conflict of interest and unfair competitive advantage, management thereof and norms for exclusion on this account, under Section 26 (3) of this Act; (p) Provisions relating to Procurement against Rate Contracts concluded by Central Purchase Organisations under Section 29 (3) of this Act; (q) Provisions relating to publishing Invitation To Bid under Sections 30 and 31 of this Act; (r) Procedure to be followed and threshold values relating to Open Competitive Bidding, Restricted Bidding, Single Source Procurement, Two-Stage Bidding, Competitive Negotiations, and Electronic Reverse Auctions under Chapter IV of this Act; (s) Provisions relating to threshold value and procedure for Procurement through Request for Quotations under Section 36 of this Act; 	
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	<ul style="list-style-type: none"> (t) Provisions relating to threshold value and procedure for Procurement through Purchase through Purchase Committee and Purchase without Quotations under Section 38 of this Act; (u) Procedure for Framework Agreements under Section 39 of this Act; (v) Provisions relating to notification of successful bid under Section 28 of this Act; (w) The form, manner of verification and fee for grievance application under Section 42 of this Act; (x) Requirements relating to Offsets under Section 53 of this Act; (y) Provisions relating to bid securities, performance securities, inspection of Works, Goods and Services, content of Bidding Documents, modification and withdrawal of bids, contract management. (z) any other matter regarding which the Central Government, may be of the opinion, that Rules are required. 	
	<p><u>CHAPTER II: TRANSPARENCY AND ACCOUNTABILITY IN PROCUREMENT</u></p>	
<p>Determination of Need for Procurement</p>	<p>5. (1) In all cases, the procuring entity shall first determine the need for the subject matter of Procurement, including the scope and quantity.</p> <p>(2) While assessing the need, the procuring entity shall take into account the estimated cost of the Procurement and also decide on the following:</p>	

	<p>(a) the method of Procurement to be followed with justification thereof;</p> <p>(b) need for Pre-qualification, if any;</p> <p>(c) preferential treatment, if any applicable and policy or Rules under which such treatment is to be provided;</p> <p>(d) Offsets as may be required under the Rules; and</p> <p>(e) any other matter as laid down in the Rules.</p> <p>(3) The procuring entity shall maintain documents relating to the determination or assessment made under Sub-sections (1) and (2) of this Section.</p> <p>(4) The procuring entity may publish information regarding planned Procurement activities for the forthcoming year(s).</p> <p><i>Provided</i>, publication under this Sub-section does not constitute a solicitation, does not oblige the procuring entity to issue a solicitation and does not confer any rights on prospective Bidders or Suppliers.</p>	
<p>Participation of Bidders</p>	<p>6 (1) The procuring entity shall not establish any requirement aimed at limiting participation of Bidders in the bid process that discriminates against or among Bidders or against categories thereof, except when authorised or required to do so by this Act, the Rules under the Act or the provisions of any law for the time being in force.</p> <p>(2) The Central Government may, by notification in this behalf, provide for mandatory Procurement of certain items from any category of Bidders, and purchase preference in Procurement from any category of Bidders, on the following grounds:</p> <p>(a) The promotion of domestic industry</p>	

	<p>(b) Socio-economic policy of the Central Government</p> <p>(c) Any other consideration in public interest in furtherance of a duly notified Central Government policy</p> <p><i>Provided,</i> any such notification shall contain a reasoned justification for such mandatory or preferential Procurement, the category of Suppliers chosen and the nature of preference provided.</p> <p>(3) Nothing in this Section shall be construed to prevent the Central Government or any procuring entity from imposing or enforcing measures restricting participation on account of reasons:</p> <ol style="list-style-type: none"> a. necessary to protect public morals, order, or safety; b. necessary to protect human, animal or plant life or health; c. necessary to protect intellectual property; d. necessary for the protection of country's essential security interest; e. for not disclosing any information that it considers necessary for the protection of country's essential security interests. 	
<p>Qualifications of Bidders</p>	<p>7. (1) Any Bidder participating in the Procurement Process shall—</p> <ol style="list-style-type: none"> (a) Possess the necessary professional, technical, financial and managerial resources and competence required by the Invitation To Bid and Complete Bidding Document issued by the procuring entity; (b) Have fulfilled its tax obligations to the 	

	<p>state;</p> <p>(c) Not be insolvent, in receivership, bankrupt or being wound up, not have its affairs administered by a court or a judicial officer, not have its business activities suspended and must not be the subject of legal proceedings for any of the foregoing reasons;</p> <p>(d) Not have, and their directors and officers not have, been convicted of any criminal offence related to their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a Procurement Contract within a period of two years preceding the commencement of the Procurement Process, or not have been otherwise disqualified pursuant to debarment proceedings.</p> <p>(e) Fulfill any additional qualifications that shall be prescribed by Rules made in this behalf.</p> <p>(2) The procuring entity may require a Bidder to provide any such information as it considers necessary to make an evaluation in accordance with sub-Section (1) of this Section.</p> <p>(3) Any requirement established pursuant to this Section shall be set out in the Pre-qualification documents, if any, and in the Bidding Documents and shall apply equally to all Bidders.</p> <p>(4) The procuring entity shall evaluate the qualifications of Bidders only in accordance with:</p> <p>(a) The requirement of this Section; and</p> <p>(b) Any further qualification criteria and procedures stipulated in the</p>	
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	Invitation To Bid and Complete Bidding Document.	
Procurement to be done with necessary approval	8. All Procurement under this Act shall be done with the approval of the authority which has the necessary financial powers to approve such Procurement.	
Time Frame for processing	9. The Procurement Process shall ordinarily be completed within a reasonable time and not later than 120 days from the date of determination of need. <i>Provided</i> that a longer period may be prescribed for complex Procurements or certain categories of Procurements in the Rules or Regulations. <i>Provided further</i> that in case the process takes longer than 120 days or the time prescribed in the Rules or Regulations, reasons for the same shall be recorded in writing by the procuring entity.	
Documentary Record of Bid Process and of Communications	10. (1) The procuring entity shall maintain a record of its Procurement proceedings, which shall include the following: (a) documents pertaining to determination of need for Procurement under Section 5 of this Act; (b) description of the subject matter of the Procurement under Section 12 of this Act; (c) statement of the reason for choice of a Procurement method other than Open Competitive Bidding under Section 30(2) of this Act or Procurement through Rate Contract in accordance with Section 29(3) of this Act;	

	<p>(d) list of the participating Bidders and their qualifications;</p> <p>(e) requests for clarifications and any responses thereto;</p> <p>(f) bid prices;</p> <p>(g) summary of the evaluation of bids, details of any reconsideration or appeal proceedings, and the related decisions;</p> <p>(h) Any other information or record required to be maintained as per the Rules.</p> <p>(2) Any document, notification, decision or any other information generated in the course of a Procurement and communicated as required by this Act, including in connection with grievance redressal proceedings or in the course of a meeting, or forming part of the record of the Procurement Process, shall be in a form that provides a record of the content of the information and that is accessible so as to be usable for subsequent reference.</p> <p>(3) Where necessary or expressly permitted by the procuring entity, communication of information between Bidders and the procuring entity may be made by means that do not provide a record of the content of the information on the condition that, immediately thereafter, confirmation of the communication is given to the recipient of the communication in a form that provides a record of the content of the information and that is accessible so as to be usable for subsequent reference.</p>	
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Integrity Pact	<p>11. (1) The Central Government shall, through Rules, specify the nature of Procurements and the threshold value above which the Integrity Pact would need to be entered into.</p> <p>(2) The Integrity Pact, where entered into, will cover all stages of the Procurement Process from the Invitation To Bid/pre-bid stage including Pre-qualification to the stage of last payment or warranty period as applicable.</p> <p>(3) The format of the Integrity Pact will be as may be prescribed under the Rules and shall include, among others, the following provisions:</p> <ul style="list-style-type: none"> (a) Commitment by the Bidder that it has not paid and shall not pay any illegal gratification to secure the contract in question. (b) Commitment by the procuring entity to ensuring a level playing field and fair play in the Procurement Process. (c) Provision for review and oversight by independent monitors. (d) Provision for specific sanctions on the Bidder for violations of the Integrity Pact. (e) In cases where there is prime facie evidence, commitment by the procuring entity to initiate disciplinary action. 	
Description of the Subject Matter of Procurement	<p>12. (1) The description of the subject matter of Procurement shall be such as to meet the essential needs of the procuring entity.</p> <p>(2) To the extent practicable, the description of the subject matter of Procurement shall be objective, functional</p>	

	<p>and generic, and shall set out the relevant technical, quality and performance characteristics.</p> <p>(3) Where applicable, the technical specifications shall be based on national technical regulations or recognized national standards or building codes, wherever these exist or in their absence, relevant International standards may be used.</p> <p>(4) The guidelines for drawing up the description of the subject matter of Procurement shall be laid down in the Rules.</p>	
<p>Criteria for Evaluation</p>	<p>13. (1) The criteria for determining the responsive and successful bids shall be contained in the Bidding Documents;</p> <p>(2) The criteria for evaluation of the bids may include price, the cost of operating, maintaining and repairing Goods or construction, the time for delivery of Goods, completion of construction or provision of Services, the terms of payment and of guarantees in respect of the subject matter of the Procurement, the experience and reliability of the Bidders, any mandatory or preferential Procurement in accordance with the provisions of this law and any other criterion deemed relevant by the procuring entity;</p> <p>(3) The relative weights to be attached to each criterion shall be specified in the Complete Bidding Document;</p> <p>(4) No other criteria, apart from those mentioned in the Complete Bidding Document may be used by the procuring entity in evaluating bids.</p>	

<p>Price Negotiations</p>	<p>14. No price negotiations shall ordinarily take place between the procuring entity and Bidder with respect to a bid presented by the Bidder other than as specifically authorised under the provisions of this Act or the Rules.</p> <p><i>Provided,</i> where negotiations take place, reasons for the necessity of negotiations shall be recorded by the procuring entity in writing.</p>	
<p>Contract Terms</p>	<p>15. (1) The terms and conditions of the Procurement Contracts entered into shall be in accordance with the provisions of this Act, the applicable Rules and the conditions indicated in the Bidding Documents.</p> <p>(2) The Central Government may prescribe standard terms and conditions of contract which shall be incorporated in the Procurement Contracts entered into by procuring entities as applicable.</p>	
<p>Central Public Procurement Portal and e-Procurement</p>	<p>16. (1) The Central Government shall set up and maintain a Central Public Procurement Portal for posting all matters which are required to be brought to the attention of the public in accordance with the provisions of this Act.</p> <p>(2) Each procuring entity shall post Procurement related information as referred to in this Act on this Portal and its respective website.</p> <p>(3) Without prejudice to the generality of Sub-section (1) of this Section, the Central Public Procurement Portal shall contain the following information in relation to Procurement governed by the provisions of this Act:</p> <p style="padding-left: 40px;">(a) Invitations to bid under Sections 30(3) and 31(2) of this Act;</p>	

	<p>(b) Names and addresses of Bidders that presented bids;</p> <p>(c) If a Bidder is excluded from the bidding process under Section 26 of this Act, a statement to that effect and the reasons for such exclusion;</p> <p>(d) Details of finalised bids, their prices and Bidders;</p> <p>(e) Relevant feedback from the procuring entity on the performance of the Bidder in performing the contract that has been awarded to him.</p> <p>(f) In case of any representation or appeal under the provisions of this Act, a copy of the representation or appeal and a copy of all decisions taken in the relevant proceedings.</p> <p>(g) Any other information as may be specified in the Act or prescribed by Rules made in this behalf.</p> <p>(4) In addition to the information under Sub-section (2) of this Section, the Central Public Procurement Portal shall also display;</p> <p style="padding-left: 40px;">a. The Procurement Rules, Regulations and related instructions of general application;</p> <p style="padding-left: 40px;">b. statistical information as may be prescribed in the Rules.</p> <p>(5) The Central Government may, from time to time, prescribe the adoption of e-Procurement for different stages and types of Procurement, and to the extent thereof, the procedures specified in this Act shall be deemed to be modified for substituting written communication by e-</p>	
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	<p>communication.</p> <p>(6) Payment to Bidders and refunds if any, relating to Procurements made under this Act may be made by the procuring entities through Electronic Mechanism in accordance with the Rules in this regard.</p>	
	<p><u>CHAPTER III: PROVISIONS GOVERNING PROCUREMENT PROCESS</u></p>	
<p>Registration of Suppliers</p>	<p>17. (1) A procuring entity may invite offers from prospective Bidders for their registration as qualified Bidders for participation in the bid process pertaining to a subject matter of Procurement or class of Procurement.</p> <p>Provided, where a procuring entity does not register Bidders in respect of a subject matter of Procurement, it may use the list of registered Bidders of a Central Purchase Organisation, if any.</p> <p>(2) The registration of Bidders shall be for a specified period as may be prescribed in the Rules or Regulations.</p> <p>(3) The registration of Bidders shall be in accordance with Section 7 of this Act.</p> <p>(4) If the number of registered Bidders for a particular class of Procurement is fewer than three, the procuring entity shall invite offers to seek registration within six months.</p> <p>(5) The Central Government may prescribe the procedure and the conditions for registration of Bidders.</p> <p>(6) The notification of successful and unsuccessful registrations shall be published in the Central Public</p>	

	<p>Procurement Portal.</p> <p>(7) Where the procuring entity has compiled a list of Registered Suppliers, by whatever name so-called pre-dating the enactment of this law, such a list shall continue.</p>	
<p>Pre-qualification</p>	<p>18 (1) The procuring entity may engage in a Pre-qualification process with a view to identifying, prior to inviting bids, the Bidders that are qualified.</p> <p>(2) If the procuring entity engages in a Pre-qualification process, it shall follow the procedure as may be prescribed in the Rules.</p> <p>(3) The procuring entity shall decide who is pre-qualified in accordance with Section 7 of this Act and the criteria set out in the invitation to pre-qualify and in the Pre-qualification documents.</p> <p>(4) Notification of successful and unsuccessful Pre-qualifications shall be published on the Central Public Procurement Portal.</p> <p>(5) Wherever a Pre-qualification process has been engaged in, only Bidders who have pre-qualified shall be entitled to continue in the Procurement proceedings.</p>	
<p>Contents of Invitation To Bid and Complete Bidding Document</p>	<p>19. (1) The Invitation To Bid shall contain:</p> <p>(a) The name and address of the procuring entity;</p> <p>(b) Specifications including the nature, quantity and place of delivery of the Goods to be supplied, the nature and location of the construction to be effected, or the nature of the Services and the location where they are to be provided;</p> <p>(c) Instructions regarding how to access</p>	

	<p>the Complete Bidding Document;</p> <p>(d) The price of the Complete Bidding Document, if any;</p> <p>(e) The method of Procurement to be used by the procuring entity;</p> <p>(f) Any notice of mandatory or preferential Procurement under Section 6(2) of this Act;</p> <p>(g) A summary of the criteria to be used for evaluation of bids;</p> <p>(h) The manner, date and time for presentation of bids;</p> <p>(i) Any other information deemed relevant by the procuring entity or prescribed by Rules made in this behalf.</p> <p>(2) The Complete Bidding Document shall contain such information as may be reasonably necessary for Bidders to submit bids and as may be prescribed by Rules in this behalf</p> <p><i>Provided</i>, the contents of the Invitation To Bid shall always be included in the Complete Bidding Document.</p> <p><i>Provided further</i>, the grievance redressal mechanism relevant to the Procurement shall be specified in the Complete Bidding Document.</p>	
<p>Time Period for making Submissions</p>	<p>20. (1) In fixing the deadline for making submissions, sufficient time shall be allowed for Bidders to prepare and present their submissions, taking into account the reasonable needs of the procuring entity.</p> <p>(2) The minimum time to be allowed for submission of bids in the case of each method of Procurement shall be as prescribed in the Rules.</p>	

	<p>(3) The time to be provided for the submission of bids shall be the same for all Bidders.</p>	
<p>Pre-Bid Clarifications</p>	<p>21. (1) Any Bidder can seek clarifications regarding any aspect of the Invitation To Bid or the Complete Bidding Document within one week of its publication;</p> <p>(2) The procuring entity shall respond to all requests for clarifications within one week of their receipt.</p> <p><i>Provided, a reply is not possible within a week, an interim reply shall be sent;</i></p> <p>(3) All requests for clarification and responses thereto shall be published on the Central Public Procurement Portal.</p> <p>(4) The procuring entity may hold a pre-bid conference to clarify doubts regarding the details of the subject matter of Procurement.</p>	
<p>Changes to Bidding Documents</p>	<p>22. (1) In case any modifications are made to the Bidding Documents, the procuring entity shall publish these changes in the same manner as the publication of the initial Bidding Documents;</p> <p>(2) In case a clarification or modification is issued to the Bidding Documents, the procuring entity may, prior to the deadline for making the submission, extend the deadline in order to allow the Bidders sufficient time to take into account the clarification or modification while making the submission.</p> <p>(3) Any Bidders who have sent their bids in response to the original invitation shall have the opportunity to modify or re-submit them, as the case may be, within the period of time originally allotted or such</p>	

	extended time as may be allowed for submission of bids, when changes are made to the Bidding Documents.	
Submission of Bids	<p>23. (1) The manner, place, date and time for making submissions shall be set out in the Bidding Documents;</p> <p>(2) A bid shall be submitted in the form and in accordance with the requirements specified in the Invitation To Bid and the Complete Bidding Document;</p> <p>(3) A bid in paper form shall be submitted in a sealed envelope;</p> <p><i>Provided</i>, if a bid is submitted in any other form, it must ensure a similar degree of authenticity, security and confidentiality as submission in a sealed envelope.</p> <p>(4) No late bids shall be accepted and shall be returned unopened by the procuring entity to the Bidder;</p> <p>(5) All bids submitted within the time period specified in the Bidding Documents shall be kept securely by the procuring entity and opened in accordance with Section 24 of this Act.</p>	
Opening of Bids	<p>24. (1) The procuring entity shall, prior to the deadline for submission of the bids, constitute a Bid Opening Committee consisting of at least 3 members.</p> <p>(2) Subject to the provisions of this Act, the Bid Opening Committee shall be responsible for opening of the bids in the manner prescribed in the Rules or Regulations.</p> <p>(3) If the two bid system is followed in terms of Section 32 of this Act and a technical bid and financial bid are to be</p>	

	<p>separately submitted:</p> <ul style="list-style-type: none"> a. the Bid Opening Committee shall at the first instance, open the technical bid only. Provided, the technical bid may also be opened by the Technical Evaluation Committee constituted in terms of Section 25 (3) of this Act; b. the financial bid of only those technical bids found to be acceptable shall be opened by the Bid Evaluation Committee constituted in terms of Section 25 (1) of this Act. <p>(4) Bids shall be opened at the place and time specified in the Complete Bidding Document in accordance with the procedure prescribed therein;</p> <p>(5) All participating Bidders or their representative shall have the opportunity to participate in the opening of bids;</p> <p>(6) The name and address of each Bidder whose bid is opened and the bid price, if the price bid is being opened, shall be announced to those persons present at the opening of bids.</p>	
<p>Evaluation of Bids</p>	<p>25. (1) The procuring entity shall, prior to the specified date for submission of bid, constitute a Bid Evaluation Committee consisting of at least 3 members.</p> <p>(2) The Bid Evaluation Committee shall be responsible for evaluation of the Bids in accordance with the criteria specified in the Bidding Documents in the manner prescribed in the Rules or Regulations.</p> <p>(3) If the two bid system is followed in terms of Section 32 of this Act and a technical bid and price bid are to be separately submitted:</p>	

	<p>(a) the procuring entity shall also constitute a Technical Evaluation Committee consisting of 3 members with relevant expertise to evaluate the technical bids and identify the technically acceptable bids.</p> <p>(b) the financial bids of only those technical bids found to be acceptable shall be opened and evaluated by the Bid Evaluation Committee.</p> <p>(4) Where considered necessary, the procuring entity may also prescribe trials, sample testing and other additional methods of technical evaluation of a bid.</p> <p><i>Provided</i> that the requirement of such trials, sample testing or additional methods of evaluation shall be indicated in the Bidding Documents and a record of such trials and testing shall be maintained in a manner prescribed in the Rules.</p>	
Exclusion of Bids	<p>26. (1) A bid shall be excluded when:</p> <p>(a) A Bidder is not qualified according to Section 7 of this Act.</p> <p>(b) It materially departs from the requirements specified in the Invitation To Bid and the Complete Bidding Document;</p> <p>(c) The Bidder submitting the bid, his agent or anyone acting on his behalf, gave or agreed to give directly or indirectly, to any current or former officer or employee of the procuring entity or other governmental authority a gratuity in any form, an offer of employment or any other thing of value, so as to unduly influence</p>	

	<p>the Procurement Process.</p> <p>(2) A bid shall be excluded as soon as the cause for its exclusion is discovered;</p> <p>(3) Based on any prescribed disclosure on the part of the Bidder or <i>suo motu</i>, a procuring entity may exclude a Bidder from the Procurement proceedings in accordance with the Rules prescribed in this behalf, if the Bidder has an unfair competitive advantage or a conflict of interest.</p> <p>(4) The procuring entity shall disclose the reasons for excluding a bid in writing and inform the Bidder concerned;</p> <p>(5) All decisions to exclude bids shall be published on the Central Public Procurement Portal.</p>	
<p>Cancellation of the Procurement Process</p>	<p>27. (1) The procuring entity may cancel the Procurement at any time prior to the acceptance of the successful bid and, after the successful bid was accepted in accordance with the provisions of this Act, for reasons to be recorded in writing.</p> <p>(2) The procuring entity shall not open any bids or proposals after taking a decision to cancel the Procurement.</p> <p>(3) The decision of the procuring entity to cancel the Procurement and reasons for the decision shall be included in the record of the bid process and promptly communicated to all Bidders that participated in the bid process.</p> <p>(4) The procuring entity shall promptly return any bids or proposals that remain unopened at the time of the decision to the Bidders that presented them.</p> <p>(5) If the Bidder whose bid has been</p>	

	<p>accepted as successful fails to sign any written Procurement Contract as required, or fails to provide any required security for the performance of the contract, the procuring entity may cancel the bidding process.</p> <p>(6) If a Bidder is convicted of any offence under this Act, the procuring entity shall:</p> <ol style="list-style-type: none"> a. Cancel the bidding process if the bid of the convicted Bidder has been declared as successful but no Procurement Contract has been signed; b. Rescind the contract or forfeit the payment of all or a part of the contract value if the Procurement Contract has been signed between the procuring entity and the convicted Bidder. 	
<p>Award Contract of</p>	<p>28. (1) Subject to Section 26 of this Act, the procuring entity shall consider that bid which best satisfies the criteria for evaluation, as successful.</p> <p>(2) A bid shall be treated as successful in terms of Sub-section (1) of this Section, only after the competent authority has approved the Procurement in terms of that bid.</p> <p>(3) Notification of the bid as successful, the Standstill Period, and any other information which may be prescribed by Rules or Regulations made in this behalf, shall be sent to all participating Bidders and be published on the Central Public Procurement Portal</p> <p><i>Provided,</i> that the Standstill Period shall be for a period of 10 days from the date of</p>	

	<p>notification of a bid as successful.</p> <p>(4) During the Standstill Period the procuring entity shall not sign the Procurement Contract.</p> <p>(5) Sub Sections (3) and (4) of this Section shall not apply to:</p> <ol style="list-style-type: none"> a. Procurements made through Framework Agreements which are already in place; b. Procurements made under Section 31(1)(c), Section 33(1)(b) and Section 35(1)(a) of this Act. c. in cases where the contract value is below threshold values as may be prescribed; and d. in cases which meet other criteria as may be prescribed. <p>(6) Upon expiry of the Standstill Period, or in case a Standstill Period is not envisaged in terms of Sub Section (5) of this Section, the procuring entity shall dispatch the notice of acceptance of the successful submission to the Bidder that presented that submission, unless any order to the contrary is issued as part of the reconsideration procedure in terms of Section 41 of this Act, by the relevant Grievance Redressal Committee in terms of Section 42 of this Act or on an appeal to the Court in terms of Section 44 of this Act.</p> <p>Provided that if the order issued on reconsideration or appeal does not forbid acceptance of the successful submission, the procuring entity shall, while dispatching the notice of acceptance, take into account any other directions that may be contained in the order.</p> <p>(7) Subsequent to the notice, a contract shall be signed between the procuring</p>	
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	<p>entity and the Bidder in strict accordance with the terms specified in the bid.</p> <p>(8) Notification regarding the signing of the contract shall be published on the Central Public Procurement Portal</p>	
	<p><u>CHAPTER IV: METHODS OF PROCUREMENT</u></p>	
<p>Methods of Procurement</p>	<p>29. (1) The procuring entity may conduct Procurement by means of:</p> <ul style="list-style-type: none"> (a) Open Competitive Bidding (b) Restricted Bidding (c) Two-stage Bidding (d) Competitive Negotiations (e) Single Source Procurement (f) Electronic Reverse Auctions (g) Request for Quotations (h) Purchase through Purchase Committee (i) Purchase without Quotations (j) Any other method of Procurement used by the procuring entity, subject to the approval of the Central Government on the grounds that it is necessary for the procuring entity to use such method, and that the method satisfies the principles governing this Act. <p>(2) The procuring entity may also enter into Framework Agreements subject to the conditions and procedures in Section 39.</p> <p>(3) Notwithstanding anything contained in sub-Sections (1) and (2) of this Section, the procuring entity may procure items against Rate Contracts concluded by</p>	

	Central Purchase Organisations in accordance with Rules which may be prescribed in this behalf.	
Open Competitive Bidding	<p>30. (1) Open Competitive Bidding shall be the preferred method of Procurement to be followed.</p> <p>(2) Where the procuring entity chooses an alternative method of Procurement in accordance with the provisions of this Act, it shall record in writing the reasons and circumstances that justify the use of such method.</p> <p>(3) When Open Competitive Bidding is followed, the procedure shall include the following requirements:</p> <p>(a) The procuring entity shall invite bids by publishing an Invitation To Bid:</p> <ul style="list-style-type: none"> i. In a minimum of one national newspaper ;and ii. On the National Public Procurement Portal; and iii. On its own official website; and iv. In accordance with Rules as may be prescribed in this behalf <p><i>Provided</i>, when Procurement from foreign Bidders is envisaged, adequate publicity to the Invitation To Bid shall, in addition, be given in a manner prescribed in the Rules.</p> <p>(b) Without prejudice to Sub-section (3) of this Section the procuring entity shall make physical copies of the Invitation To Bid available</p>	

	<p>at its office.</p> <p>(c) The procuring entity may also follow the Pre-qualification procedure and invite bids from pre-qualified Bidders only.</p>	
<p>Restricted Bidding</p>	<p>31. (1) The procuring entity may engage in Procurement by Restricted Bidding if:</p> <p>(a) The subject matter of Procurement can be supplied only by a limited number of Suppliers;</p> <p>(b) The time and cost required to examine and evaluate a large number of bids would be disproportionate to the value of the subject matter of Procurement;</p> <p>(c) Owing to an urgency brought about by events unforeseeable to the procuring entity, the procuring entity is of the opinion that the subject matter of Procurement cannot be usefully obtained using Open Competitive Bidding</p> <p>(2) When Restricted Bidding is followed, the procedure shall include the following requirements:</p> <p>(a) The procuring entity shall issue an Invitation To Bid by writing directly, and on the same day, to either or all of the following:</p> <p>i. those Suppliers who are registered with the procuring entity or with a Central Purchase Organisation for the subject matter of Procurement;</p> <p>ii. those Suppliers who it believes are in a position to supply the subject matter of Procurement</p> <p><i>Provided</i>, that the procuring entity</p>	

	<p>shall invite at least three bids;</p> <p><i>Provided further</i>, that all invitations to bid shall be published on the Central Public Procurement Portal.</p> <p>(b) The procuring entity may allow any Bidder to whom the Invitation To Bid has not been issued, to also bid as per terms laid down in the Bidding Documents and subject to the qualification criteria being met.</p>	
Two Bid System	<p>32. In the case of Open Competitive Bidding, Restricted Bidding and for entering into Framework Agreements, if the procuring entity is of the opinion that it is essential to evaluate the technical aspects of a bid before considering its financial aspect, it may solicit two bids consisting of:</p> <p>(1) A technical bid consisting of technical details along with commercial terms and conditions</p> <p>(2) A financial bid indicating item-wise price for the items mentioned in the technical bid</p>	
Single Source Procurement	<p>33. (1) A procuring entity may engage in Single Source Procurement if:</p> <p>(a) The subject matter of the Procurement is available only from a particular Supplier, or a particular Supplier has exclusive rights in respect of the subject matter of the Procurement, such that no reasonable alternative or substitute exists, and the use of any other Procurement method would therefore not be possible;</p> <p>(b) Owing to a sudden unforeseen</p>	

	<p>event, there is an extremely urgent need for the subject matter of the Procurement, and engaging in any other method of Procurement would be impractical;</p> <p>(c) The procuring entity, having procured Goods, equipment, technology or Services from a Supplier, determines that additional supplies must be procured from that Supplier for reasons of standardization or because of the need for compatibility with existing Goods, equipment, technology or Services, taking into account the effectiveness of the original Procurement in meeting the needs of the procuring entity, the limited size of the proposed Procurement in relation to the original Procurement, the reasonableness of the price and the unsuitability of alternatives to the Goods or Services in question;</p> <p>(2) Where the procuring entity engages in Single Source Procurement the procedure shall include the following requirements:</p> <p>(a) It shall solicit a proposal or price quotation from a single Supplier.</p> <p>(b) The procuring entity may engage in negotiations in good faith with the Supplier from which a proposal or price quotation is solicited.</p> <p>(c) The following information relating to the Procurement shall be published on the Central Public Procurement Portal:</p> <p>i. The solicitation for a proposal or a price quotation;</p>	
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	<p>ii. Notification of the Bidder as successful in terms of Section 28 of this Act.</p>	
<p>Two-Stage Bidding</p>	<p>34. (1) The procuring entity may engage in Procurement by way of Two-stage Bidding if:</p> <ul style="list-style-type: none"> (a) It is not feasible for the procuring entity to formulate detailed specifications or identify specific characteristics for the subject matter of Procurement, without receiving inputs regarding its technical aspects from Bidders; (b) The character of the subject matter of Procurement is subject to such rapid technological advances and market fluctuations to make Open Competitive Bidding unfeasible; (c) Open Competitive Bidding was engaged in but cancelled in accordance with Section 27 of this Act and the procuring entity considers that a new Open Competitive Bidding process would be unlikely to result in a Procurement Contract <p>(2) Where the procuring entity engages in Two-stage Bidding the procedure shall include the following requirements:</p> <ul style="list-style-type: none"> (a) In the first stage of the bidding process, the procuring entity shall invite bids containing the technical aspects and contractual terms and conditions of the proposed Procurement without a bid price; (b) All first stage bids, which are not otherwise ineligible according to the provisions of this law, shall be evaluated by a Technical Evaluation 	

	<p>Committee established under Section 25(3) of this Act.</p> <p>(c) The Technical Evaluation Committee may hold discussions with the Bidders and if such discussion is held, equal opportunity shall be extended to all Bidders to participate in the discussions</p> <p>(d) Notwithstanding anything contained in Sections 30 and 31 of this Act, in the second stage of the bidding process in Two-stage Bidding, the procuring entity shall invite bids from those Bidders whose bids at the first stage were not rejected, to present final bid with bid prices in response to a revised set of terms and conditions of the Procurement; <i>Provided,</i> that the procuring entity shall invite at least three bids;</p> <p>(e) In revising the relevant terms and conditions of the Procurement, the procuring entity may not modify the fundamental nature of the Procurement itself, but may add, amend or delete any specification of the subject matter of Procurement or criterion for evaluation</p> <p>(f) Any Bidder, invited to but not wishing to present a final bid may withdraw from the bidding proceedings without forfeiting any Bid Security that he may have been required to provide or being penalised in any way, by declaring his intention to withdraw to the procuring entity.</p>	
<p>Competitive Negotiations</p>	<p>35. (1) The procuring entity may engage in Competitive Negotiations if:</p> <p>(a) There is an urgent need for the</p>	

	<p>subject matter of Procurement, and engaging in Open Competitive Bidding or any other competitive method of Procurement because of the time involved in using those methods would therefore be impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by the procuring entity nor the result of dilatory conduct on its part;</p> <p>(b) Owing to a catastrophic event, there is an urgent need for the subject matter of Procurement making it impractical to use Open Competitive Bidding or any other competitive method of Procurement because of the time involved in using those methods;</p> <p>(c) Where the procuring entity determines that the use of any other competitive method of Procurement is not appropriate for the protection of essential security or strategic interests of the State.</p> <p>(2) Notwithstanding anything contained in Section 14 of this Act, when the procuring entity engages in Competitive Negotiations, the procedure shall include the following requirements:</p> <p>(a) Publish a summary notice of Procurement on the Central Public Procurement Portal and in the manner prescribed by Rules made in this behalf which shall include:</p> <ol style="list-style-type: none"> i. The name and address of the procuring entity ii. The subject matter of the Procurement iii. The principal terms of the 	
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	<p style="text-align: center;">Procurement Contract</p> <p>iv. The method of Procurement to be adopted</p> <p>v. Any other details prescribed by Rules made in this behalf</p> <p>(b) Directly invite for negotiations regarding the subject matter of Procurement an adequate number of Bidders to ensure effective competition.</p> <p>(c) Provide the criteria to be used for evaluation of the offers</p> <p>(d) Negotiate with the Bidders thus invited on an equal basis</p> <p><i>Provided,</i> any information which involves a trade secret of a Bidder shall not be disclosed by the procuring entity to other Bidders in the course of negotiations</p> <p>(e) Request all Bidders remaining in the proceedings to present, within five days of the ending of negotiations, a best and final offer with respect to all aspects of their proposals.</p> <p>(f) No negotiations between the procuring entity and any Bidder or Bidders shall be permitted regarding the best and final offers presented</p> <p>(g) The successful offer shall be the one which, in the opinion of the procuring entity, best fulfills the criteria for evaluation;</p> <p>(h) Notice of the award of contract shall be published on the Central Public Procurement Portal and in the manner prescribed by the Rules made in this behalf</p>	
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<p>Electronic Reverse Auctions</p>	<p>36. (1) A procuring entity may engage in Procurement by means of an Electronic Reverse Auction, if:</p> <ul style="list-style-type: none"> (a) It is feasible for the procuring entity to formulate a detailed description of the subject matter of the Procurement; and (b) There is a competitive market of Bidders anticipated to be qualified to participate in the electronic reverse auction, such that effective competition is ensured; (c) The criteria to be used by the procuring entity in determining the successful submission are quantifiable and can be expressed in monetary terms. <p>(2) Where the procuring entity engages in Electronic Reverse Auction the procedure shall include the following requirements:</p> <ul style="list-style-type: none"> (a) The procuring entity shall solicit bids by causing an invitation to the Electronic Reverse Auction to be published in accordance with Section 30(3) or 31(2) of this Act, as the case may be. (b) The invitation shall include all information as set out in Section 19 and the following additional information required with respect to the electronic reverse auction: <ul style="list-style-type: none"> i. How the auction can be accessed, including appropriate information for connection to the auction; ii. The deadline by which the Bidders shall register for the auction and the requirements 	
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	<p>for registration;</p> <ul style="list-style-type: none"> iii. The date and time of the opening of the auction and the requirements for identification of Bidders at the opening of the auction; iv. The criteria governing the closing of the auction; v. Other Rules for the conduct of the auction, including the information that will be made available to the Bidders in the course of the auction, the language in which it will be made available and the conditions under which the Bidders will be able to bid; vi. Any additional means by which Bidders may seek clarifications of information relating to the Procurement proceedings; vii. Any other requirements established by the procuring entity in conformity with this Act and any Regulations relating to the Procurement proceedings. <p>(3) The procuring entity may impose a maximum number of Bidders that can be registered for the Electronic Reverse Auction only to the extent that capacity limitations in its communication system so require.</p> <p>(4) Section 23 of this Act shall not apply to Electronic Reverse Auctions.</p>	
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Request For Quotations	<p>37. (1) A procuring entity may engage in Procurement by means of Request for Quotations in the following situations and where the estimated value of Procurement is less than the amount that may be specified in the Rules or Regulations:</p> <ul style="list-style-type: none"> a. Procurement of readily available commercial off-the-shelf Goods that are not specially produced to the particular description of the procuring entity and for which there is an established market; b. physical services that are not specially provided to the particular description of the procuring entity and are readily available in the market; c. Procurement of Goods urgently required for maintenance or emergency repairs in a Central Public Sector Enterprise's own operations; <p>(2) Where the procuring entity engages in Request for Quotations the procedure shall include the following requirements:</p> <ul style="list-style-type: none"> a. Quotations shall be requested from as many Suppliers as practicable, subject to a minimum of three; b. Each Supplier shall be permitted to give only one price quotation. c. The successful quotation shall be the lowest priced quotation meeting the needs of the procuring entity as set out in the Request for Quotations. 	
Purchase through Purchase Committee and Purchase without	<p>38. (1) Subject to the monetary limits in this regard as may be prescribed in the Rules:</p> <ul style="list-style-type: none"> (a) A procuring entity may procure Goods and Services as specified 	

<p>Quotations</p>	<p>in Section 37 of this Act through a Purchase Committee within the procuring entity comprising three members to be nominated by the head of the procuring entity.</p> <p>(b) When a procuring entity makes Procurement in the manner provided for in this Sub-section, the Purchase Committee shall record a certificate to the effect that it is satisfied that the Goods or Services are of requisite quality, are priced at the prevailing market rate and the Supplier recommended is reliable and competent to provide the Goods or Services in question.</p> <p>(2) Subject to the monetary limits in this regard as may be prescribed in the Rules,</p> <p>(a) A procuring entity may procure Goods or Services as specified in Section 37 of this Act directly without inviting quotations or bids.</p> <p>(b) When a procuring entity makes Procurement in the manner provided for in this Sub-section, the authority competent to approve the purchase shall record a certificate to the effect that he is personally satisfied that the Goods/ Services are of requisite quality and have been purchased at a reasonable price</p> <p>(3) Nothing contained in Chapter III and Chapter V of this Act shall apply to purchases under this Section</p>	
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<p>Framework Agreements</p>	<p>39. (1) A procuring entity may engage in a Framework Agreement procedure in accordance with the Rules, where it determines that:</p> <ul style="list-style-type: none"> (a) The need for the subject matter of Procurement is expected to arise on an indefinite or repeated basis during a given period of time; (b) By virtue of the nature of the subject matter of Procurement, the need for it may arise on an urgent basis during a given period of time. <p>(2) The Framework Agreement procedure as prescribed shall include:</p> <ul style="list-style-type: none"> (a) The manner in which Framework Agreements are to be established including the method of bidding to be followed; and (b) The manner in which a Procurement Contract has to be entered into using a Framework Agreement 	
<p>Additional Conditions for use of methods of Procurement</p>	<p>40. Notwithstanding anything contained in Section 31 to 39 of this Act, the Central Government may through notification, add conditions for the use of any of the methods of Procurement mentioned in Section 29 (1) (b) to (i) of this Act, in a manner that is consistent with the principles of transparency and accountability.</p>	
	<p><u>CHAPTER V: GRIEVANCE REDRESSAL</u></p>	

<p>Reconsideration</p>	<p>41. (1) Subject to Section 43 of this Act, any Bidder who claims to have suffered, or may suffer, loss or injury due to non-compliance of a decision or action of the procuring entity with the provisions of this Act, may, file a request for reconsideration of the decision or action, to the procuring entity within 5 days of the decision being made or the action taken.</p> <p><i>Provided,</i> after the notification of a Bidder as successful in terms of Section 28 of this Act, a request for reconsideration may be filed only by a Bidder who has participated in Procurement proceedings in accordance with the provisions of the Act.</p> <p><i>Provided further,</i> if the two bid system is followed in terms of Section 32 of this Act, after the notification of a Bidder as successful in terms of Section 28 of this Act, a request for reconsideration may be filed only by a Bidder whose technical bid is found to be acceptable in terms of Section 25 of the Act.</p> <p>(2) The official to whom requests for reconsideration have to be addressed shall be indicated in the Bidding Documents.</p> <p>(3) Upon receipt of an application for reconsideration the procuring entity shall decide on whether the bid process should be suspended pending disposal of the application.</p> <p>(4) A request filed under Sub-section (1) of this Section, shall be dealt with as expeditiously as possible and the procuring entity shall endeavour to dispose of the petition finally within thirty days from the date of receipt of the request.</p> <p><i>Provided,</i> if the request is rejected, brief reasons for the rejection shall be communicated by the procuring entity to the</p>	
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	<p>Bidder making the request.</p> <p>(5) If the procuring entity does not pass a final order within the time specified in Sub-section (4) of this Section, the petitioner shall be entitled immediately thereafter to file an application under Section 42 of this Act.</p> <p>(6) No information shall be disclosed in the reconsideration proceedings if doing so would impair the protection of national security interests, cause disclosure of classified information, impede law enforcement, prejudice the legitimate commercial interests of the Bidders, impede fair competition or contravene any law.</p>	
<p>Grievance Redressal Committees</p>	<p>42. (1) Pre award Grievance Redressal Committee</p> <p>a. Every procuring entity conducting Procurement under this Act shall notify in the Bidding Documents a ‘Pre-award Grievance Redressal Committee’.</p> <p>b. The Pre-award Grievance Redressal Committee shall:</p> <ul style="list-style-type: none"> i. consist of three members; ii. be headed by an official at least one level senior to the officer(s) heading the concerned Bid Opening Committee, Bid Evaluation Committee and Technical Evaluation Committee, as applicable. iii. comprise 2 other members who are not associated with that Procurement. <p>Provided, that the composition of the Pre-award Grievance Redressal Committee shall differ from that of the relevant Bid Opening Committee, Bid Evaluation Committee and the</p>	

	<p>Technical Evaluation Committee concerned with that Procurement.</p> <p>c. Subject to Section 43 of this Act, any Bidder who is aggrieved by the outcome of his reconsideration request under Section 42 of this Act relating to any matter prior to the notification of a bid as successful in terms of Section 28 of this Act, may file an application before the Pre-award Grievance Redressal Committee within the period specified in Sub-section (3) of this Section and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed.</p> <p>(2) <i>Post-award Grievance Redressal Committee</i></p> <p>a. While notifying the successful Bidder in terms of Section 28 of this Act, in all cases except those Procurements covered by Section 45 of this Act, the procuring entity shall notify a 'Post-award Grievance Redressal Committee'.</p> <p>b. The Post-award Grievance Redressal Committee shall:</p> <ol style="list-style-type: none"> i. consist of three members; ii. be headed by an official at least one level senior to the officer having powers to approve the concerned Procurement. iii. comprise 2 other members who are not associated with that Procurement. <p>c. Subject to Sections 43 and 45 of this Act, any Bidder who is aggrieved by the outcome of his reconsideration request under Section 41 of this Act relating to declaration of a bid as successful, may file an application before the Post-</p>	
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	<p>award Grievance Redressal Committee within the period specified in Sub-section (3) of this Section and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed.</p> <p><i>Provided</i>, that the application before the Post-award Grievance Redressal Committee may be filed only by a Bidder who has participated in Procurement proceedings in accordance with the provisions of the Act.</p> <p><i>Provided further</i>, if the two bid system is followed in terms of Section 32 of this Act, after the notification of a Bidder as successful in terms of Section 28 of this Act, the application before the Post-award Grievance Redressal Committee may be filed only by a Bidder whose technical bid is found to be acceptable in terms of Section 25 of the Act.</p> <p>(3) An application under Sub-section (1)(c) and (2)(c) of this Section shall be filed within 5 days of the reconsideration request under Section 41 of this Act, being disposed of.</p> <p>(4) In an application under sub Section (1)(c) or (2)(c) of this Section, the relevant committee shall not ordinarily suspend the Procurement Process, pending disposal of the application, unless a failure to do so will lead to miscarriage of justice.</p> <p>(5) An application filed under this Section shall be dealt with as expeditiously as possible and the Committee shall endeavour to dispose of the petition finally within thirty days from the date of receipt of the petition.</p> <p>(6) Where any application cannot be disposed of within the period of thirty days</p>	
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	<p>specified in Sub-section 5 of this Section, the Committee shall record its reasons in writing for not disposing of the application within the said period and shall endeavour to dispose of the application finally within a further period not exceeding thirty days.</p> <p>(7) The Committees shall pass a reasoned order after hearing the parties and calling for the records of the Procurement proceedings, as may be required.</p> <p>(8) The Committees shall have the following powers:</p> <ol style="list-style-type: none">a. In the case of a grievance filed by a Bidder against a decision or action prior to the notification of a bid as successful, the Pre-award Grievance Redressal Committee may order the modification or deletion of a bid specification in a manner prescribed by this Act or extend any time-periods prescribed by this Act or pass any other order necessary to ensure compliance with this Act.b. In the case of a grievance filed by a Bidder against a decision notifying a particular bid as successful, the Post-award Grievance Redressal Committee may either modify the terms of the proposed award to the successful Bidder or cancel the proposed award of the contract to a Bidder and order a re-bid or order the appropriate body to re-evaluate the bid or bids so as to ensure compliance with the provisions of this Act.c. In case of frivolous or vexatious grievances being filed by a Bidder, the relevant Committee may impose penalty on such Bidder, to the extent	
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	<p>provided for in Section 48 of this Act.</p> <p>(9) Proceedings before the Grievance Redressal Committees shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code.</p> <p>(10) No information shall be disclosed in the reconsideration proceedings and no hearing shall take place if doing so would impair the protection of national security interests, cause disclosure of classified information, impede law enforcement, prejudice the legitimate commercial interests of the Bidders, impede fair competition or contravene any law.</p> <p>(11) The order of the Committees shall be final unless it is modified or set aside in an appeal filed under Section 44 of this Act.</p>	
<p>Grievances to not relate to certain issues</p>	<p>43. A request for reconsideration under Section 41 of this Act and an application under Section 42 of this Act shall not be made in regard to decisions of the procuring entity relating to the following issues:</p> <p>(1) determination of need including the selection of the method of Procurement in terms of Section 5 of this Act;</p> <p>(2) provisions limiting participation of Bidders in the bid process in terms of the provisions of Section 6 of this Act;</p> <p>(3) The functional requirement and performance characteristics indicated in the description of the subject matter of Procurement in terms of Section 12 of this Act;</p> <p>(4) The criteria for evaluation specified in the bidding and prequalification documents in terms of Sections 13 and 18 of this Act;</p>	

	<p>(5) The decision of whether or not to enter into negotiations in terms of Section 14 of this Act;</p> <p>(6) Cancellation of a Procurement Process in terms of Section 27 of this Act;</p> <p>(7) Selection of a method of Procurement in terms of Section 29 of this Act;</p> <p>(8) Applicability of the provisions on confidentiality under Section 54 of this Act.</p>	
Appeal to the High Court	<p>44. (1) Any person aggrieved by the order of the relevant Grievance Redressal Committee referred to in Section 42 of this Act, may prefer an appeal to the appropriate High Court within 15 days of the date on which such order has been passed.</p> <p><i>Provided</i> that such appeal shall be heard by a bench of not less than 2 judges of the High Court.</p> <p>(2) The High Court after fixing a day for hearing the appellant and hearing him accordingly may dismiss the appeal.</p> <p>(3) If the appeal is not dismissed under Sub-section (2) of this Section, the High Court shall issue notice to the parties concerned.</p> <p><i>Provided</i> that no interim order shall be passed by the High Court without giving an opportunity to the procuring entity of being heard.</p> <p>(4) The High Court shall endeavour to pronounce judgment within 90 days of the petition being filed.</p>	
Proceedings directly before the High Court in	<p>45. For Procurements above the monetary limit prescribed by Rules in this behalf, any person</p>	

certain cases	aggrieved by the outcome of his reconsideration request under Section 41 of this Act, relating to the acceptance of a particular bid as successful, may file a writ petition in the appropriate High Court directly.	
	<u>CHAPTER VI: OFFENCES AND PENALTIES</u>	
Punishment for Receiving or Granting Undue Gain	<p>46. (1) Whoever dishonestly demands or agrees to receive or receives or offers, agrees to grant or grants, as the case may be, any undue gain in the form of remuneration, gratuity, inducement or other benefit in the course of a Procurement Process, knowing or having reason to believe such gain to be an undue gain, shall be –</p> <p>(a) punishable in terms of the provisions of the Prevention of Corruption Act, 1988 or Indian Penal Code, 1860, if he is a public servant;</p> <p>(b) and in respect of others, with imprisonment of either description for a term which may extend to five years or with fine which may extend to 50 lakh rupees or 10 percent of the value of Procurement, whichever is higher, or with both.</p> <p>(2) The provisions of Sub-section (1) of this Section shall also apply where any undue gain has been received or granted, as the case may be within a period of two years commencing from the date on which the relevant Procurement Contract or Framework Agreement has been entered into.</p>	
Interference with Bid Process	<p>47. Whoever:</p> <p>(1) interferes with or influences any bid process with the intention of securing any undue gain or advantage for any entity or class of entities; or</p> <p>(2) interferes with the Procurement</p>	

	<p>Process with the intention of causing any undue disadvantage for any Bidder or class of Bidder; or</p> <p>(3) engages in any action or lobbying, direct or indirect, with the objective of unduly restricting fair competition;</p> <p>(4) intentionally influences any procuring entity or any official thereof or willfully or fraudulently makes any assertion or representation that would restrict or constrain fair competition in any Procurement Process;</p> <p>(5) engages a former official of a procuring entity as an employee, director, consultant, adviser or otherwise, within a period of one year after such former official was associated with a Procurement in which the employer had an interest;</p> <p>(6) engages in any form of bid-rigging, collusive bidding or anticompetitive behavior in the Procurement Process; or</p> <p>(7) breaches confidentiality imposed under Section 54(3) of this Act;</p> <p>shall be punishable with imprisonment of either description for a term which may extend to five years or with fine which may extend to Rs 50 lakhs or 10 percent of the value of Procurement, whichever is higher, or with both.</p>	
<p>Vexatious Litigation</p>	<p>48. Whoever intentionally files vexatious, frivolous or malicious grievances under this Act, with the intention of delaying or defeating any Procurement or causing loss to any procuring entity or any other Bidder, shall be punishable with fine which may extend to twenty lakh rupees.</p>	

<p>Offences Companies</p>	<p>by 49. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of having committed the offence and shall be liable to be proceeded against and punished accordingly.</p> <p><i>Provided</i> that nothing contained in this Sub-section shall render any such person liable for any punishment if he proves that the offence was committed without his knowledge or that he had acted in due diligence.</p> <p>(2) Notwithstanding anything contained in Sub-section (1) of this Section, where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of having committed such offence and shall be liable to be proceeded against and punished accordingly.</p> <p><i>Explanation:</i> For the purpose of this Section:</p> <p>"Company" means a body corporate and includes a limited liability partnership, firm, registered society, trust or other association of individuals; and</p> <p>"Director" in relation to a limited liability, partnership or firm, means a partner in the firm; in relation to a society means a member of its governing body; and in</p>	
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	relation to a trust means a trustee.	
Abetment of Offences	50. Whoever abets an offence punishable under this Act, shall, notwithstanding anything contained in the Indian Penal Code, be punished with the punishment provided for the offence.	
Debarment from Bidding	<p>51. (1) A Bidder or Supplier shall be debarred by the Central Government if:</p> <ol style="list-style-type: none"> a. It has been convicted of an offence under Section 46 of this Act; b. It has been convicted under the Indian Penal Code or any other law in force, for causing loss of life or property or causing a threat to public health or public order as part of execution of a public Procurement Contract. <p>(2) A Bidder or Supplier which has been debarred under the provisions of Sub-section (1) of this Section shall not be eligible for engaging in the bid process of any procuring entity for a period of three years commencing from the date on which it was debarred.</p> <p>(3) Where any Bidder has been convicted under this Act for offences other than those mentioned in Sub-section (1) of this Section, for his conduct in respect of a Procurement Contract or Framework Agreement, as the case may be, the relevant procuring entity shall consider debarring such Bidder for a maximum period extending to two years.</p> <p>(4) Where the Bid Security or the performance security or any substitute thereof, as the case may be, of a Bidder has been forfeited by a procuring entity in respect of any bid process, Procurement</p>	

	<p>Contract or Framework Agreement, the Bidder may be debarred from participating in any bid process undertaken by the procuring entity for a maximum period extending to two years.</p> <p>Provided that before taking action as above the procuring entity shall give notice to the Bidder and afford him an opportunity to make his submission in response to the notice.</p> <p>(5) Without prejudice to the aforesaid provisions of this Section, the Central Government may prescribe Rules relating to debarment, its time period and circumstances thereof.</p> <p>(6) The names and addresses of all debarred Bidders shall be included in a publicly accessible and periodically updated list on the Portal, together with the name of the procuring entity, cause for the debarment action and the period of debarment.</p>	
Offences under Integrity Pact	52. Nothing in this Act shall affect the imposition of sanctions specified in the Integrity Pact between the procuring entity and the Bidder to the extent that such sanctions are not inconsistent with the provisions of this Act.	
	<u>CHAPTER VII: MISCELLANEOUS PROVISIONS</u>	
Offsets	53. The procuring entity may consider, seek or impose Offsets during the course of public Procurement to encourage local development or improve the balance-of-payments accounts by means of domestic content, licensing of technology, investment requirements, counter-trade or similar requirements.	

<p>Confidentiality</p>	<p>54. (1) Notwithstanding anything contained in this Act, the procuring entity shall not disclose any information if its disclosure is:</p> <ul style="list-style-type: none"> (a) Contrary to law or a judicial order; (b) Likely to impede law enforcement; (c) Likely to affect the security or strategic interests of the State; (d) Likely to affect the intellectual property rights or legitimate commercial interests of Bidders; (e) Likely to affect the legitimate commercial interests of the procuring entity in situations that may include when the Procurement relates to a project in which the procuring entity is to make a competitive bid, intellectual property rights of the procuring entity. <p>(2) Except as otherwise provided for in this Act, the procuring entity shall treat all communications related to an Invitation To Bid in such manner as to avoid their disclosure to competing Bidders or to any other person not authorised to have access to such information.</p> <p>(3) The procuring entity may impose on Bidders and their sub-contractors, if there are any for fulfilling the terms of the Procurement Contract, conditions aimed at protecting information, the disclosure of which would violate Sub-section (1) of this Section.</p>	
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<p>Protection of Action Taken in Good Faith</p>	<p>55. (1) Every functionary of a procuring entity acting under or in pursuance of the provisions of this Act or under a Rule, order or notification made thereunder, shall be deemed to be a public servant within this meaning of section 21 of the Indian Penal Code, 1860 (Central Act XLV of 1860).</p> <p>(2) No suit, prosecution or other legal proceedings shall lie against any officer or employee or any other person acting in the discharge of any function under this Act for any loss or damage caused or likely to be caused by any act which was done in good faith and in pursuance the provisions of this Act.</p> <p>(3) For the purposes of this Section, 'good faith' shall have the same meaning as is assigned to it by section 52 of the Indian Penal Code, 1860.</p>	
<p>Application of other Laws</p>	<p>56. The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force.</p>	
<p>Civil Court not to have jurisdiction</p>	<p>57. (1) No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Grievance Redressal Committee is empowered to determine by or under this Act.</p> <p>(2) No injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.</p>	

<p>Recovery of Sums Payable under the Act</p>	<p>58. Any sum payable by any person under this Act shall be recoverable as arrears of land revenue.</p>	
<p>Service of Notice, Documents and Orders</p>	<p>59. (1) For the purposes of this Act a notice, document or order shall be deemed to be served:</p> <p style="padding-left: 40px;">(a) on a natural person: (i) by delivering it to the person personally; or (ii) by leaving it at, or by sending it by post to, the address of the place of residence or business of the person last known;</p> <p style="padding-left: 40px;">(b) on a body corporate: by leaving it at, or sending it by post to, the registered office of the body corporate.</p> <p>(2) For the purposes of this Act, when the procedure prescribed under Sub-section (1) of this Section is followed, service shall be deemed to be effected by properly addressing, prepaying and posting the document, notice or order as the case may be.</p>	
<p>Placing of Rules in Parliament</p>	<p>60. Every Rule made by the Central Government under this Act shall be placed, as soon as possible after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree to make any modifications to the Rule or both Houses agree that the Rule should not be made, the Rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; provided that that any such modification or annulment shall be without</p>	

	prejudice to the validity of anything previously done under that Rule.	
Power to make Regulations	61. Each procuring entity may issue Regulations to give effect to the provisions of this Act and the Rules framed hereunder by the Central Government.	
Power to remove difficulties	<p>62. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty:</p> <p><i>Provided,</i> that no such order shall be made under this Section after the expiry of a period of two years from the commencement of this Act.</p> <p>(2) Every order made under this Section shall be laid, as soon as may be after it is made, before each House of Parliament.</p>	
Savings	63. All Rules, Regulations, orders, notifications, departmental codes, manuals, bye-laws, official memoranda or circulars relating to matters provided for in this Act, which are in force on the date of commencement of this Act, shall continue to be in force to the extent that they are consistent with the provisions of this Act, unless superseded by any action taken or any Rule, Regulation, notification or order made under this Act.	